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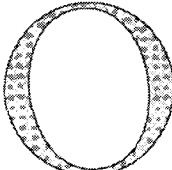
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Legislating Access to Adult Wards: Examining the Need to Narrow an Adult Ward's World

Recent legislation has addressed access to adult wards.

By Melanie S. McNeil
Edited by Natalie K. Thomas



One of the hallmarks of independence is choosing one's own associates. Obviously, the imposition of a guardianship impacts that right as well as other indicators of an adult's independence. Should we expect that guardians and advocates would hesitate to withdraw such an important right from an adult ward without evidence that such action is essential to the ward's well-being? We do expect such hesitation.

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Attorneys are advocates for their clients, and such advocacy may have a more widespread effect than just an individual client. Advocacy is the act of pleading for or actively supporting a cause or proposal.¹ When attorneys advocate for their clients at trial and appeal court decisions, the court rulings provide an interpretation of the law that guides other attorneys in the community. Attorneys also have an opportunity to affect the larger community through advocacy as part of the legislative process, addressing general problems through statutes. It is the latter that prompts this discussion.

The Reason to Create Legislation Regarding Access to Adult Wards

Often statutes are enacted because an individual constituent has had a problem that he or she brought to the attention of a legislator. During the 2001 session of the Georgia legislature, a bill was proposed that would permit the guardian of the person of an incapacitated adult, otherwise known as the adult ward, to seek a protective order to prevent a third party from contacting the ward if the contact causes emotional distress to the ward, regardless of whether or not there is a reasonable basis for the emotional distress.² The order could be sought *ex parte*, with no notice to the respondent, the ward, or any other interested parties, and the order would be permanent.³ The proposal looks much like the protective order statute for family violence.⁴

The bill grew out of a situation in which an adult ward was upset by contact with a third party. The ward purportedly wanted this specific interaction to be prohibited, but the guardian felt helpless to stop

the third party. The guardian suggested that legislation be written to provide guardians with a clear mechanism for restricting access to adult wards.

The situation and a general description of the bill were provided to an elder abuse listserve with a request to colleagues from the National Committee on Elder Abuse for comments and suggestions.⁵ A number of issues were raised and anecdotes were shared by these colleagues. One anecdote described how an agent, under a power of attorney, isolated the principal by excluding family members and then allegedly absconded with the principal's funds.⁶ In another, a granddaughter became guardian and excluded the ward's second wife from communicating with him.⁷ The ward was unhappy because his wife no longer communicated with him. He did not know that his guardian was prohibiting the contact. A third anecdote described an instance in which a guardian asked the facility where her ward lived to stop connecting her ward with the ward's grandson when he called in the evening.⁸ The ward did not know the reason that the calls stopped and the grandson was upset that he no longer had contact with the ward, his grandmother. In each of these situations, something other than the exclusion of others may have been a more appropriate course of action.

Legitimate situations exist to warrant the issuance of protective orders or orders limiting access to wards. However, the situations described by listserve members illustrate the need to cautiously craft legislation that allows for such drastic measures.

What Georgia Law Currently Provides

In Georgia, some would argue that probate judges already have the authority to prohibit an individual from contacting a ward. The court has the ability to monitor the actions of the guardian through the required filing of reports made by the guardian.⁹ The court has the ability to take action against the guardian if he is not acting appropriately.¹⁰ In addition, the law states that the guardian has the obligation to provide due care regarding the maintenance and education of the ward.¹¹ With that broad power, and the power of the court to fashion an order with such provisions as it deems proper, the guardian could argue that he or she has the power to prohibit contact.¹² In its order, the court shall set forth the findings of fact and conclusions of law which support granting or denying the petition. If a guardianship is granted, the order shall specify "[s]uch other and

further provisions of the guardianship as the court may deem proper."¹³

How Other States Have Addressed Access to Adult Wards

In Wisconsin, the guardian has responsibility for the care, custody, and control of his or her adult ward.¹⁴ With that charge, the guardian may seek protection for his or her ward. The ward's best interests are to be the basis of the guardian's actions. California has a statutory procedure for obtaining protective orders.¹⁵ Virginia also has a statutory scheme to permit a guardian to pursue a protective order and to obtain an emergency protective order *ex parte* on a showing of good cause.¹⁶

It may be helpful to provide a clear statutory mechanism for the appropriate exclusion of individuals who are deemed to have harmful contact with an adult ward. What that mechanism looks like and how it would be implemented is more complicated than one might expect at first blush. Factoring in the ages, abilities and disabilities, duration of the incapacity, worldly circumstances, and individual preferences of adult wards makes the issue multifaceted.

Adult Wards and the Problems with Limiting Access

The probate court in Georgia may appoint a guardian of the person or property, or both, for adult persons eighteen years of age or older "who [are] incapacitated by reason of mental illness, mental retardation, mental disability, physical illness or disability, chronic use of drugs or alcohol, or other cause to the extent that such adults lack sufficient understanding or capacity to make significant responsible decisions concerning their persons or communicating them"¹⁷ or "to the extent that such adults are incapable of managing their estates and the appointment is necessary either because the property will be wasted or dissipated unless proper management is provided or because the property is needed for the support, care, or well-being of such adults or those entitled to be supported by such adults."¹⁸ With so many variables, the court may appoint a guardian of the person for an older adult with dementia following an appointment for a guardian of the person of a young adult with developmental disabilities. The court may appoint only a guardian of the property for such an older adult with dementia if the older adult is experiencing difficulty with

financial transactions, but is still able to manage other decisions.¹⁹ The court may determine that a guardian of the person is appropriate for a ward with developmental disabilities, but that a limited guardianship of the property is appropriate if such ward has learned some skills with money management and the principles of commerce. Under guardianship law in Georgia, one of the underlying principles is that guardianships should be “designed to encourage maximum self-reliance and independence in the ward.”²⁰ The right to choose with whom to associate is an important aspect of self-reliance and independence. Permitting the guardian to infringe upon that right and principle should be limited.

Compliance with a protective order, or an order limiting access, may also be at issue if the ward does not live with the guardian. Wards may live in their own homes, in personal care homes or skilled nursing facilities, group homes, or with family members. The level of the person's incapacity may have some bearing on the order's enforceability. A ward living in his or her own home has less ability to exclude a visitor than a ward who lives in a skilled nursing facility with care providers who may be assisting with the exclusion. If the ward does not live with the guardian and does not agree with the exclusion, he or she may encourage a continuation of the relationship. In drafting a law to address limiting third-party access to a ward, the practical ways of achieving the goal must be considered.

Sometimes, the resolution of a problem has unintended and detrimental consequences. For example, in one Georgia case, highlighted in the *Journal of Ethics, Law and Aging*, the probate court permitted the guardian to exercise her judgment to determine how others would have access to the ward.²¹ The guardian and ward both became isolated by the guardian's desire to limit certain family members' contact with the adult ward.²² The lenient intent of this court action had an unintended consequence. In drafting a legislative solution to protect wards from others, the legislation should consider as many variables as possible to address the needs of the situation and yet avoid those unintended and detrimental consequences. Attorneys who have represented guardians and adult wards have the experience to help legislators understand the complexities of these issues and the practical realities of the solutions proposed.

Identifying Situations that Require Protection of Adult Wards

From whom may a ward be protected? Should the ward be protected from those persons who challenge the guardian but pose no threat of harm to the ward? Or should the ward be protected from those who pose a perceived threat of harm for which there is no reasonable basis in fact? Should a guardian be able to exclude an individual who, in the guardian's opinion, poses a risk of harm? If so, what constitutes the risk of harm and how substantial must it be? If the person to be excluded provides the ward with cigarettes, should that be enough of a risk for exclusion? Does it matter whether the ward is in his or her thirties with a developmental disability, as opposed to an elderly ward in his or her eighties who has been a lifelong smoker? Does it matter that the person has been a longtime friend with whom the ward has spent much time? Does it matter that the ward is upset by the person's contact only on a “bad day?”

Should the guardian have the authority to exclude if the ward is made uncomfortable by the third party's presence? What if the person is the ward's spouse? What if the spouse takes the ward places and when the ward returns, he or she seems uncomfortable or upset? Does the fact that the ward seems distressed upon return justify, in and of itself, excluding the spouse from contact with the ward? How would a court determine the cause and consequence of these types of “harmless” spousal interactions? It would seem that an order to protect or limit access based on just the observations and testimony of a guardian, even when genuinely thought to be in the ward's best interest, might not be appropriate without a closer examination of the reasons for the ward's reactions to the person.

In a Minnesota guardianship case, the appellate court detailed the expert medical testimony provided to the trial court.²³ The trial court heard testimony from a number of medical witnesses who had treated the proposed ward and who had firsthand knowledge of her condition and care, her interaction with others and with the medical staff, and the proposed ward's overall abilities.²⁴ It was determined that any order limiting access or excluding an individual would require adequate testimony from those with personal and professional knowledge of the ward. Such a requirement would avail the ward of input in the process.²⁵

Protection and Access Options

The phrase “protective order” has a connotation of danger. For those situations that clearly pose danger to the ward, a protective order may be appropriate. Frequently, interested parties seek guardianship as a means of protecting a ward from harmful events, particularly financial exploitation. An order prohibiting contact from an individual who means to take the ward’s resources may be very appropriate. However, as the anecdotes show, the problem may not demonstrate a clear danger to the ward. In determining the need for protection, the court will need to assess for whom the risk is a problem. Is the protection truly sought for the ward or is the protection sought to benefit the guardian?

In the example of the grandson calling in the evening to speak to the ward, the calls may have come too late in the day or may otherwise have upset the ward’s routine. If the grandson’s calls were neither disrupting the routine nor upsetting the ward, but caused the ward to question the guardian or choices the guardian made on behalf of the ward, the reason for exclusion may not be of pure motive, but one intended to make the guardian’s life easier. However, if the calls were upsetting to the ward, some exploration of alternatives to a protective order would be appropriate. The remedy may not be an order of protection, but rather some arrangement for calling at a better time.

An order of protection or exclusion may be motivated by the needs of the guardian. If the guardian has had a previous problem with a third party (e.g., family dispute, second-family issues, criticisms of choices the guardian made, service provider issues such as the home health care provider implementing a certain plan of care with which the guardian or the ward doesn’t agree, or perhaps an ombudsman proposing action to which the guardian doesn’t agree), the guardian may feel the need for excluding that person. A statutory scheme for protection or exclusion should include some methods for addressing the guardian’s reasons for excluding a person. This should not be tied strictly to specific criteria such as abuse, neglect, exploitation, or emotional upset, but should always bear in mind the wishes of the ward as well as his or her best interest.

The court may already have sufficient discretionary powers in the guardianship and modification procedures which are already embedded in the system in order to provide for limited accessibility.

Control of time and place of meeting with the ward may be easier when the ward lives in an institutional-type setting or with the guardian, and would obviously be more difficult if the ward lives alone. The same is true for limits of accessibility requiring someone to monitor the visit or for attempts to limit the number of visits made during a particular period. *Twitty v. Akers* is a vivid example of an extremely controlled environment for the ward.²⁶ In this case, Mrs. Akers, the guardian, agreed to visits by the ward’s adult children, but the visits were to be by each child individually.²⁷ The child would be escorted to the home of the ward and permitted to visit with the ward in one room with an off-duty sheriff’s deputy and a day nurse in attendance during the meeting.²⁸ *Twitty* illustrates that access can be very tightly controlled.

In Georgia, the Probate Court has jurisdiction over guardianships. Ordinarily, the Georgia Superior Court has jurisdiction over the process for obtaining a protective order. In most counties, the Superior Court is more backlogged than the Probate Court. The Probate Court may have a better opportunity to hear a petition sooner. The Probate Court has an ongoing relationship with the guardian and the ward and has some familiarity with the ward’s abilities and disabilities. Because the action affects the ongoing success of the guardianship, in this limited situation it seems reasonable that the authority be vested in the Probate Court.

Mediation may be a viable option with which to consider the factors involved in restricting access. In some instances, where danger exists and protection is needed, mediation obviously would not be a reasonable alternative. However, it is an available option that may relieve some of the burden on the court, while reducing the level of emotional tension among the parties and resulting in a more workable solution to the problem. In determining the need for guardianship cases, mediation is controversial. A workable option may be to provide for voluntary mediation through an appropriate statutory scheme.

The Best Interests of the Adult Ward Versus the Ward’s Right to Association

In Georgia, the guardian is directed to act in the ward’s best interest.²⁹ However, the ward retains the “right to communicate freely and privately with persons other than the guardian except as otherwise ordered by a court of competent jurisdiction.”³⁰ In

addition, all guardianships are to be “designed to encourage the development of maximum self-reliance and independence in the ward and shall be ordered only to the extent necessitated by the person’s actual and adaptive limitations.”³¹

The clash of the ward’s best interest with the encouraging of maximum self-reliance and independence is clear in instances where the guardian perceives a need for restricting access, but the ward disagrees. The grandmother who wishes to receive the nightly phone call from her grandson is an example. She may welcome the phone call even if the result is that she is angered or unhappy when the call ends. This emotion may not seem to be in her best interest, but neither is the lack of contact with her grandson. Another example is a ward who wishes to meet with the ombudsman over the guardian’s objections. The guardian may be worried that the contact might lead to retaliation or other problems with the ward’s care-giving. Guardians of younger adult wards with mental disabilities may feel a need to restrict “dating” types of contact for the ward, over his or her objections. The same may be true of guardians of older wards if the guardian perceives the “dating” type visits/contacts not to be in the best interest of the ward, even if it is welcomed as an opportunity for companionship and attention. The guardian may also wish to limit or prohibit the access of certain family contacts, even if this limitation is unwanted by the ward. Providing for restrictions of access *ex parte*, without notice even to the ward, should be the exception rather than the rule, to protect the ward’s retained right to association and communication.

Emergency and Non-Emergency Proceedings

The State of Washington has a mechanism for vulnerable adults to seek protective orders.³² The Department of Social and Health Services may seek an order to protect a vulnerable adult.³³ In emergencies, a court may issue an order before notice and a hearing if the complaint concerns a vulnerable adult.³⁴ No injunction shall be granted until it appears to the court or judge that one or more of the opposite party has had reasonable notice of the time and place of making application. In cases of emergency, however, the court may grant a restraining order until notice can be given and hearing had thereon. The law provides such a remedy if the vulnerable adult has been abandoned, abused,

financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect.³⁵

Virginia also has a procedure for obtaining emergency protective orders.³⁶ The statute requires that the person to be protected must be in danger of abuse.³⁷ The order lasts for seventy-two hours and may be extended an additional seventy-two hours.³⁸ The restrained party must be served with a copy of the order.

California has an emergency protective order statute which provides for an *ex parte* emergency protective order if a law enforcement officer asserts reasonable grounds to believe that an elder or dependent adult is in immediate and present danger of abuse or threatened abuse.³⁹ The order is only temporary and the parties must each receive a copy of the order.⁴⁰ California also has a procedure for obtaining a protective order for an elder or dependent adult who has suffered abuse.⁴¹ Abuse, as defined in the statute, includes “physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering,”⁴² or the “deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”⁴³ A protective order may be ordered *ex parte* or after a hearing, but “if the order is granted without notice, the order shall be made returnable requiring cause to be shown why a permanent order should not be granted.”⁴⁴

Under Virginia law, a protective order may be obtained in a non-emergency procedure, if family abuse has occurred.⁴⁵ Such an order may be obtained *ex parte*, but the alleged abuser must be served with the order and a hearing “must be held on the order within fifteen days of its issuance.”⁴⁶ These examples address situations of abuse, neglect, exploitation, or abandonment.

Under these statutes, whether or not the order is obtained on an emergency basis, the order is time limited. Notice and a hearing are usually required. Even in the most difficult circumstances, this is necessary for the fundamental fairness of the proceedings and to the individuals involved. Protective orders in other states seem to be reserved for the most serious of situations—abuse, neglect, abandonment, and financial exploitation. None of these statutes would address the problem that prompted the legislation proposed in Georgia. Sometimes, when a ward is

emotionally upset by a certain interaction, it may be good to limit access from that specific third party. Perhaps the idea of limiting access is a more appropriate characterization of the remedy for such a situation. Creating a mechanism that is less restrictive for less serious situations, however, seems more appropriate.

What Elements a Statute Might Include

A statute that would take away an adult ward's ability to associate and communicate with others should provide for emergency situations. An *ex parte* order of protection should be available, but only for a limited time. The statute should include the requirement or at least a strong suggestion for the court to assess each individual situation and address the particular emergency rather than providing a blanket remedy. Some outside parameters, for example, could dictate or provide that an order for protection or one limiting access may be in effect for no longer than fifteen days, and the court has discretion to order an early termination. The statute could further provide that no order of protection or limitation of access may extend beyond fifteen days without notice to the adult ward, the person or persons to be excluded, and other interested parties, as well as provide an opportunity for a hearing. Some requirements are necessary, including what constitutes an emergency and what findings must be made to obtain such an order.

Such a statute should include a separate process for a non-emergency order for protection. This non-emergency process should always require a hearing. The statute must require that the court appoint counsel for the ward unless the ward chooses to obtain his or her own counsel. The ward must be present at the hearing unless distance, illness, or disability prevents his or her attendance. The court must have the option of appointing a guardian *ad litem* at its discretion and that a guardian *ad litem* must always be appointed upon request. Some standard of proof must be included. The court should also have some latitude to require expert testimony. For ongoing oversight the guardian should be required to report to the court the results of the order at some time in the future, perhaps sixty days after the order is issued, and should also be required to address the results of the order in the annual report that the guardian must file with the court. A mechanism must also be included for the termination or expiration of

the order. Certain classes of individuals such as long-term care ombudsmen, law enforcement officers, and other government agency personnel should never be excluded from contact with the adult ward since such personnel have clearly been established for the overall protection of the ward.

Conclusion

Guardianship takes away a person's fundamental freedoms. In many instances the adult ward has experienced the freedom to choose where he or she lives, whom to marry, whether to file suit and with whom to associate. Most of those freedoms are removed when a guardianship is ordered. In Georgia, one of the freedoms not automatically removed by the guardianship order is the freedom of association. The ability of a guardian to take away that freedom through court action should be carefully crafted to protect the wishes of the ward, not just his or her best interests.

Attorneys have the ability to advocate for their clients before they even have clients by participating in legislative committee meetings, offering testimony themselves, and encouraging witnesses to participate in such legislative committee meetings. Attorneys also have the opportunity to advocate with their legislators to support legislation, and to encourage others in the community who have an interest in the issue to engage in conversation with a variety of interested parties about any questions, ideas, or concerns that may arise. Those who have had some experience with the issue have a great deal to offer legislators who have had little to no exposure to the issue at hand. What better way to serve our clients, than to help with the creation of the law, a true example of advocacy?

Endnotes

1. BLACK'S LAW DICTIONARY 55 (7th ed. 1999).
2. H.B. 630, 146th Gen. Assem., Reg. Sess. (Ga. 2001).

A BILL TO BE ENTITLED AN ACT

To amend Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to crimes against the person, so as to establish a procedure whereby a protective order may be obtained on behalf of an incapacitated adult to protect the

incapacitated adult against contact by another person which causes emotional distress to the incapacitated adult; to provide that violation of such a protective order shall constitute a crime and may also be punishable as contempt of court; to provide for grounds and procedures for obtaining such protective orders; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to crimes against the person, is amended by adding at its end a new Article 9 to read as follows:

“ARTICLE 9

16-5-110. (a) As used in this Code section, the term ‘incapacitated adult’ means an adult who is under the care or custody of a legally appointed guardian of the person. (b) The guardian of the person of an incapacitated adult may seek and be granted a protective order prohibiting any third party from contacting the incapacitated adult if contact by such third party causes emotional distress to the incapacitated adult. It shall not be a requirement for issuance of such a protective order that there be a rational basis for the emotional distress caused by the contact. (c) Except for proceedings involving a nonresident respondent, the superior court of the county where the respondent resides shall have jurisdiction over all proceedings under this article. For proceedings under this article involving a nonresident respondent, the superior court where the incapacitated adult resides shall have jurisdiction. (d) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that emotional distress has been caused to an incapacitated adult in the past and may occur in the future, the court may order such temporary relief *ex parte* as it deems necessary. If the court issues an *ex parte* order, a copy of the order shall be immediately furnished to the petitioner. (e) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to protect the incapacitated adult from unnecessary emotional distress. The order or agreement may: (1) Direct the respondent to refrain from unnecessary contact with the incapacitated adult; (2) Direct the incapacitated adult to refrain from unnecessarily being present at specified places at specified times where

the incapacitated adult’s presence would make it unreasonably difficult or burdensome for the respondent to comply with the court’s order; and (3) Contain such other terms and conditions as may be appropriate to protect the incapacitated adult from unnecessary emotional distress without placing unreasonable limits on the otherwise permissible activities of the respondent. (f) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect. (g) Any such order granted under this Code section shall be a permanent order, subject to modification for good cause shown on the petition of the incapacitated adult or the respondent. (h) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section. (i) Any person who intentionally and willfully violates a protective order issued pursuant to this Code section shall upon conviction be guilty of a misdemeanor. An order issued pursuant to this Code section may also be enforced through proceedings for contempt.”

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

3. *Id.*
4. GA. CODE ANN. §19-13-4 (Supp. 2000).

Protective Orders & Consent Agreements; Contents; Issuing Copy of Order to Sheriff; Expiration; Enforcement

- (a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The court shall not have the authority to issue or approve mutual protective orders concerning paragraphs (1), (2), (5), (9), or (11) of this subsection, or any combination thereof, unless the respondent has filed a verified petition as a counter petition pursuant to Code Section 19-13-3 no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing and the provisions of Code Section

19-13-3 have been satisfied. The orders or agreements may:

- (1) Direct the respondent to refrain from such acts;
 - (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
 - (3) Require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children;
 - (4) Award temporary custody of minor children and establish temporary visitation rights;
 - (5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
 - (6) Order either party to make payments for the support of a minor child as required by law;
 - (7) Order either party to make payments for the support of a spouse as required by law;
 - (8) Provide for possession of personal property of the parties;
 - (9) Order the respondent to refrain from harassing or interfering with the victim;
 - (10) Award costs and attorney's fees to either party; and
 - (11) Order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.
- (b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.
- (c) Any such orders granted under this Code section shall not remain in effect for more than six months; provided, however, that upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code section to a permanent order.
- (d) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of

every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.

5. National Center on Elder Abuse (NCEA) Website, at <http://www.elderabusecenter.org> (last visited May 29, 2001). The elder abuse listserve is sponsored by the NCEA through a grant funded by the Administration on Aging at the U.S. Department of Health and Human Services. The American Bar Association (ABA) Commission on Legal Problems of the Elderly, one of the six partner organizations in the NCEA, operates the listserve for the NCEA. The elder abuse listserve provides professionals working in fields related to elder abuse with a free forum for raising questions, discussing issues, and sharing information and best practices. The goal of the listserve is to enhance (a) efforts to prevent elder abuse, (b) the delivery of adult protective services and (c) the response of the justice system to victims of elder abuse. The following professionals working in elder abuse or allied fields are eligible to subscribe to the listserve: adult protective services practitioners and administrators, aging services providers and administrators, educators, health professionals, judges, lawyers, law enforcement officers, prosecutors, policymakers, and researchers. To subscribe, send an e-mail to the list manager, Lori Stiegel, at lstiegel@staff.abanet.org. A request to subscribe must come from the individual who wishes to subscribe; no one will be subscribed at the request of another person. Your request must include the following information: your name, your e-mail address, your profession and a statement of your interest/expertise in adult protective services/elder abuse, the name of the organization for which you work (if applicable) and its address, and your phone number so that you can be contacted in the event of an e-mail problem.
6. NCEA Listserve, at <http://www.elderabusecenter.org/listserve/index.html> (last visited May 29, 2001).
7. *See id.*
8. *See id.*
9. GA. CODE ANN. §29-5-3 (2000).

Powers and Duties of Guardian of Person of an Incapacitated Adult

- (a) Subject to the provisions of this Code section, guardians of the person of incapacitated adults appointed under this chapter shall have those rights and powers reasonably necessary to provide adequately for the support, care, education, and well-being of the ward and to perform all other duties imposed by this chapter on such guardians.
 - (b) The guardian of the person:
 - (1) Shall respect and maintain the individual rights and dignity of the ward at all times;
 - (2) Is entitled to custody of the person of his ward and may establish the ward's place of abode within or outside this state, to the extent that this is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward;
 - (3) Shall make arrangements from funds available from the ward's estate or third parties for the support, care, well-being, and appropriate habilitation, training, and education of his ward in the least restrictive environment, considering the needs and resources of the ward;
 - (4) Shall be reasonably accessible to his ward and shall maintain regular contact or communication with his ward;
 - (5) Shall take reasonable care of clothing, furniture, vehicles, and other personal effects of the ward which are with the ward;
 - (6) May participate in such legal proceedings, in the name of the ward, as are appropriate for the support, care, education, or well-being of the ward;
 - (7) Shall petition the court for the appointment of a guardian *ad litem* for the ward whenever, in any legal proceeding, the interest of the ward could be adverse to that of the guardian;
 - (8) Subject to Chapters 9 and 20 of Title 31 and any other pertinent law, may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service;
 - (9) Except as otherwise provided by law, shall not personally be liable to third parties for the acts of his ward solely because of the existence of the guardian-ward relationship; and
 - (10) Within four months after appointment and within two months after each anniversary date of appointment, shall file with the probate court a personal status report concerning his ward, which shall include:
 - (a) A specific description by the guardian of the ward's general condition, living situation, progress, development, and needs; and
 - (b) Recommendations for any alteration in the guardianship order.
 - (c) In its order of appointment or subsequent orders, the probate court may limit any powers granted to the guardian of the person under this chapter. In subsequent orders, the court may impose any additional duties upon such guardian which under this chapter could have been, but were not, imposed by any earlier order of the court.
10. GA. CODE ANN. §29-2-45 (2000).
- Procedure in Case of Mismanagement by Guardian; Citation to Appear; Discretion of Judge of Probate Court.**
- (a) If the judge of the probate court knows or is informed that any guardian wastes or in any manner mismanages the property of his ward, does not take due care of the maintenance and education of his ward according to his circumstances, fails or refuses to make returns as required by law, or for any cause is unfit for his trust, the judge shall cite the guardian to answer to the charge at a regular term of the court. Upon investigation of the guardian's action, the judge, in his discretion, may do any or all of the following:
 - (1) Revoke the guardian's letters;
 - (2) Require the guardian to appear and submit to a settlement of his accounts following the procedure set forth in Code Sections 29-2-76 through 29-2-81 whether or not the guardian has first resigned or been removed and whether or not a new guardian has been appointed;
 - (3) Pass such other order as in his judgment is expedient under the circumstances of each case.
 - (b) If the judge of the probate court receives a return which indicates that any guardian may have wasted the property of the ward or failed

in any manner to comply with applicable law, in lieu of citing the guardian to answer the charge, the court in its discretion may order the return recorded, without being approved or disapproved, and wait until the guardianship is terminated, and then allow the ward or his successors in interest to determine whether any action should be taken against the former guardian or the personal representative of such former guardian for any such waste or failure. In such case, a copy of the return and the order of the judge shall be served by personal service on the surety, if any. The decision of the judge not to cite the guardian to appear shall not relieve the guardian or the surety of any liability which may be found if the ward or his successors determine that action should be taken for such apparent waste or failure within four years after the termination of the guardianship.

11. GA. CODE ANN. §15-9-30(5)-(7) (2000).

Subject matter jurisdiction; powers and duties generally; copy of the Official Code of Georgia Annotated furnished for each judge.

(a) Probate courts have authority, unless otherwise provided by law, to exercise original, exclusive, and general jurisdiction of the following subject matters ...

(5) The appointment and removal of guardians of minors and persons who are incompetent because of mental illness or mental retardation;

(6) All controversies as to the right of guardianship, except that the probate court shall not be an appropriate court to take action under Code Section 19-7-4;

(7) The auditing and passing of returns of all executors, administrators, and guardians;

12. GA. CODE ANN. §29-5-6(f)(1)(K) (2000).

13. *Id.*

14. WIS. STAT. §880.38 (2000).

Guardian of the person of incompetent. (1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the

ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court under s. 55.06 but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11). The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13). (2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

15. CAL. FAM. CODE §6250 (West 2001).

16. VA. CODE ANN. §31-14 (Michie 2000).

Guardian and Ward. Powers of courts over guardians.

The circuit courts may hear and determine all matters between guardians and their wards, require settlements of guardianship accounts, remove any guardian for neglect or breach of trust, and appoint another in his stead, and make any order for the custody, health, maintenance, education and support of an infant and the management, disbursement, preservation and investment of his estate.

VA. CODE ANN. § 16.1-253.4 (2000), *amended by* ch. 474, 2001 Va. Acts.

Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral *ex parte* emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a violation of §§ 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such

offense against a family or household member by the respondent, the judge or magistrate shall issue an *ex parte* emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse;
2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

C. An emergency protective order issued pursuant to this section shall expire seventy-two hours after issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the juvenile and domestic relations district court is in session. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the

allegedly abused person.

E. As soon as practicable after receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia criminal information network system established and maintained by the Department pursuant to Chapter 2 (§§ 52-12 et seq.) of Title 52. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia criminal information network system. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by § 19.2-81.3 C. The original copy shall be verified by the judge or magistrate who issued the order and then filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

I. As used in this section, "copy" includes a facsimile copy.

17. GA. CODE ANN. §29-5-1(a)(1) (2000).
18. GA. CODE ANN. §29-5-1(a)(2) (2000).
19. GA. CODE ANN. §29-2-7 (2000).
20. GA. CODE ANN. §29-5-7(h) (2000).
21. Janet L. Twitty, *Commentary: Some Older People Do Not Have the Same Rights as Convicted Criminals: Bill's Story*, 5 J. ETHICS, L. & AGING 51 (1999).
22. *Id.*
23. *In re Guardianship of Kowalski*, 478 N.W.2d 790 (Minn. Ct. App. 1992).
24. *Id.* at 794.
25. *Id.* at 797.
26. *Twitty v. Akers*, 462 S.E.2d 418 (Ga. Ct. App. 1995).
27. *Id.*
28. *Id.* at 469.
29. GA. CODE ANN. §29-5-7(g)(1) (2000).
30. GA. CODE ANN. §29-5-7(g)(4) (2000).
31. GA. CODE ANN. §29-5-7(h) (2000).
32. WASH. REV. CODE § 74.34.110 (2001).

Protection of vulnerable adults—Petition for protective order. An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

(1) A vulnerable adult may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner is a vulnerable adult and that the petitioner has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit

made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(5) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(6) An action under this section shall be filed in the county where the petitioner resides; except that if the petitioner has left the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the previous or new residence.

(7) The filing fee for the petition may be waived at the discretion of the court.

33. WASH. REV. CODE § 74.34.150 (2001).

Protection of vulnerable adults — Department may seek relief. The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. Neither the department of social and health services nor the state of Washington shall be liable for failure to seek relief on behalf of any persons under this section.

34. WASH. REV. CODE § 7.40.050 (2000).
35. WASH. REV. CODE § 74.34.110 (2001) (for text of statute, see *supra* note 32).
36. VA. CODE ANN. § 16.1-253.4 (Michie 2000) (for text of statute, see *supra* note 16).
37. *See id.*
38. *See id.*
39. CAL. FAM. CODE § 6250(d) (West 2001).

A judicial officer may issue an *ex parte* emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following ...

(d) That an elder or dependent adult is in immediate and present danger of abuse as defined

in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.

CAL. FAM. CODE §6251 (West 2001).

An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult.

40. CAL. FAM. CODE §6253 (West 2001).

An emergency protective order shall include all of the following:

(a) A statement of the grounds asserted for the order.

(b) The date and time the order expires.

(c) The address of the superior court for the district or county in which the endangered person or child in danger of being abducted resides.

(d) The following statements, which shall be printed in English and Spanish:

(1) "To the Protected Person: This order will last only until the date and time noted above. If you wish to seek continuing protection, you

will have to apply for an order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(2) "To the Restrained Person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

CAL. FAM. CODE §6256 (West 2000).

An emergency protective order expires at the earlier of the following times:

(a) The close of judicial business on the fifth court day following the day of its issuance.

(b) The seventh calendar day following the day of its issuance.

41. CAL. WELF. & INST. CODE §15657.03 (West 2001).

42. CAL. WELF. & INST. CODE §15610.07(a) (West 2001).

43. CAL. WELF. & INST. CODE §15610.07(b) (West 2001).

44. CAL. WELF. & INST. CODE §15657.03(d)(2) (West 2001).

45. VA. CODE ANN. §16.1-253.1 (Supp. 2000), *amended by ch.101, 2001 Va. Acts.*

46. *Id.* §16.1-253.1(B).